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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

DELORES TEAGUE,

Petitioner,

v.

CITY OF ST. LOUIS, MISSOURI,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

QUESTIONS PRESENTED FOR REVIEW OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL PROVISIONS INVOLVED

Pursuant to Rule 34, Supreme Court Rules, Respondent accepts and adopts herein by reference, those portions of

Petitioner s Petition for Certiorari designated "Questions Presented for Review," "Opinions Below," "Jurisdiction" and "Constitutional Provisions Involved."

TABLE OF CONTENTS

	Page
Questions Presented for Review, Opinions Below, Jurisdiction and Constitutional Provisions Involved	i
Statement of the Case	2
Argument in Opposition to Certiorari	8
Conclusion	13

TABLE OF AUTHORITIES

Goff v. San Jacinto Junior College, 588 F.2d 96 (1979)	12
Monell v. New York Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978)	10, 11, 12
Rice v. Sioux City Memorial Parks Cemetary, 75 S.Ct. 614, 349 U.S. 70, 90 L.Ed. 897 (1955)	9
Tyler v. Woodson, 597 F.2d 643 644 (1979)	12
42 U.S.C. 1983	11, 12
42 U.S.C. 2000e *et seq.*	11

STATEMENT OF THE CASE

Pursuant to Rule 34, Supreme Court Rules, Respondent accepts and adopts herein by reference, Petitioner's Statement of the Case with the following corrections and additions: In her Statement of the Case, at page 7, Petitioner states that she was "arbitrarily discharged from her job." In fact, she was discharged for being a wholly inadequate employee as can be seen from the following transcript references:

--Excessive absenteeism (T. 248-249). From January to June of 1973, plaintiff was docked for a total of 233 hours, and took 39 sick leave hours. From July to December, 1973, she was docked 8 hours and took 48 hours of sick leave. From January to June, 1974, plaintiff was docked 44

hours, took 41 hours sick leave, and had a 146-hour leave of absence. In July and August of 1974, she was docked 13 hours and took 11 hours of sick leave.

On one occasion when plaintiff claimed to be hospitalized, her supervisors, upon telephoning the hospital learned that plaintiff had been discharged at least a week earlier. (T. 237).

--Poor Service Ratings (T. 296-298). For the period from January to June, 1972, plaintiff was given an overall rating of "Inadequate." From June to December, 1972, her overall rating was "Adequate." In December, 1973, for the year preceding, her overall rating was again "Inadequate."

--Failure to stay in her assigned area as directed (T. 374-376, 378). Plaintiff was terminated in early

August, 1974, when she could not be found in her assigned work area where she had been instructed to remain (T. 378). This had also occurred on at least three prior occasions in March, and June of 1974, and plaintiff had received a three-day suspension as a warning and disciplinary measure. (T. 374-376).

--Unwilling and/or inability to perform her duties as required. Although plaintiff's job called for her to make her inspections alone, she refused on a number of occasions to work unless another inspector was assigned to go with her (T. 378-379). Additionally, she complained repeatedly about having to go into the field in inclement weather (T. 211 and 374), and about the areas in which she was assigned to work (T. 367-369). Further,

plaintiff had some difficulty in doing her job correctly, particularly with regard to the paperwork attendant upon her inspections (T. 383-384). Finally, plaintiff demonstrated a disregard for the established procedures for notifying her superiors when she left her assigned area for any reason (T. 391).

In addition to evidence demonstrating plaintiff's inadequacy for her position, defendant also produced evidence to indicate that plaintiff was treated no differently from any other person in her position.

Attorneys for both parties, both on direct and cross-examination, questioned defendant's witnesses with regard to the treatment of other city employees in positions the same or similar to that held by plaintiff.

(T. 223-225, 242-245, 254-257, 268-289, 304-306, 315-318, 319-322, 322-323, 344-345, 394-395). In each case, defendant was able to show that a difference in treatment, if any, was warranted by a difference in circumstances.

Defendant also volunteered statistical breakdowns, by race and sex of its Sanitarian I workforce. (T. 259-261) as follows:

In January, 1972 (shortly after plaintiff commenced her employment), there were a total of 68 Sanitarians I: 10 black females, 21 black males, 1 white female and 36 white males.

In July, 1974 (shortly before plaintiff was terminated), there were a total of 33 Sanitarians I: 9 black females, 11 black males, 13 white males and no white females.

At the end of 1977 (at the time of trial), there were a total of 52 Sanitarians I: 10 black females, 25 black males, no white females and 17 white males.

Plaintiff complained that she was forced to work alone, while male inspectors were permitted to work in pairs. Plaintiff's supervisors testified (T. 263, 347-349) that, while interior inspectors were occasionally assigned in pairs because of the hazards of their jobs, exterior inspectors such as plaintiff were routinely assigned to work alone, regardless of their race or sex.

Plaintiff complained that male exterior inspectors were permitted to make inspections from their vehicles, while she was required to make inspections on foot. Again, plaintiff's supervisors

testified (T. 333-336, 360-361) that all exterior inspectors were required to make initial inspections on foot, and that re-inspections, i.e. checking to see if violations had been abated, might be done in a vehicle where feasible.

ARGUMENT IN OPPOSITION TO CERTIORARI

I.

The Court Should Decline To Grant Certiorari In This Matter Because The Questions For Review Set Forth By Petitioner Do Not Meet The Requirements Of Rule 17, Supreme Court Rules, that There Be "Special and Important" Reasons For Review, Inasmuch As The Factual Situation Herein Will Limit The Applicability Of Any Decision Rendered On Review.

Respondent herein contends that certiorari should not be granted by the Court, inasmuch as neither of the two questions for review presented by Petitioner are of such stature as to fall within the scope of "special and important" as required by Rule 17 of the Supreme Court Rules.

Rule 17 explicitly states that "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." The Rule goes on to enumerate some of types of issues which could give rise to the granting of certiorari.

Petitioner, in her Petition for Certiorari, does not claim that any of the reasons enumerated in Rule 17 are applicable to her situation. Nor does she maintain that her situation involves some other characteristic which would render it "special and important" within the meaning of Rule 17.

In Rice v. Sioux City Memorial Parks Cemetery, 75 S.Ct. 614, 349 U.S. 70, 99 L.Ed. 897 (1955), the Court ob-

served that certiorari "should not be granted except in cases involving principles the settlement of which is important to the public, as distinguished from that of parties."

It would seem obvious that at least Petitioner's Point II -- effectively, that the court's judgment was not supported by the evidence -- would be of no import to anyone but Petitioner, and certainly not to the general public, inasmuch as the factual situation applies solely to Petitioner.

With regard to Petitioner's Point I, Petitioner has stated a question of apparently broader interest: to-wit, Should the Court's decision in Monell v. New York Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978) be applied retroactively to actions pending at the time of the Court's

decision? The breadth and importance of the question, however, is illusory. Because of the peculiar factual situation involved, any decision rendered by this Court as to the retroactivity of Monell, supra, would probably not be universally applicable and would not resolve the issue of retroactivity in clear-cut terms.

This is so because the same facts which gave rise to Plaintiff's claim under 42 U.S.C. 1983 also are the basis of Petitioner's claim under 42 U.S.C. 2000e et seq. (hereinafter Title VII). Plaintiff was afforded a complete hearing on her Title VII cause of action and specific findings of fact and conclusions of law were issued by the trial court.

In short, it would serve no useful purpose to remand this matter for hearing pursuant to 42 U.S.C. 1983 for two reasons: 1) If Petitioner was unable to

successfully prosecute an action pursuant to Title VII, it would be virtually impossible, under the same fact situation, for her to make a case under 42 U.S.C. 1983, and 2) Unless the district court were to change its mind, the conclusions of law rendered by the district court with regard to plaintiff's Title VII claim effectively preclude Petitioner's success in an action pursuant to 42 U.S.C. 1983.

Thus, should this Court grant certiorari, any decision resulting therefrom would, of necessity, be limited to the unusual factual situation found in this matter, and not of national import.

There is precedent in both the Eighth and Fifth Circuits for refusing to remand for reconsideration under Monell, supra, when to do so would serve no purpose. Tyler v. Woodson, 597 F.2d 643, 644 (1979); Goff v. San Jacinto Junior

College, 588 F.2d 96 (1979).

CONCLUSION

This Court should deny Petitioner's Petition for Writ of Certiorari and should affirm the judgment below.

DATED this day of , 1980 at St. Louis, Missouri.

Respectfully Submitted,

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